

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

31093

FILE: B-218231.2 DATE: April 26, 1985

MATTER OF: John C. Grimberg Company,
Inc.--Request for Reconsideration

DIGEST:

Bid was properly rejected as nonresponsive when contemporaneously submitted telegram indicated bidder's intent to exclude compliance with sketch it had not received in bid package. Telegram created ambiguity as to whether bid represented unequivocal offer to meet material requirement of solicitation and required bid's rejection since acceptance would be prejudicial to other bidders who accepted IFB's terms without reservation.

John C. Grimberg Company, Inc. (Grimberg) requests reconsideration of our decision, John C. Grimberg Company, Inc., B-218231, Mar. 12, 1985, 85-1 C.P.D. _____, dismissing its protest of the Navy's award of a contract under solicitation No. N62477-81-B-0482. In that decision, we dismissed Grimberg's protest that its bid was improperly rejected by the Navy as nonresponsive for taking exception to a requirement of the solicitation. We dismissed the protest under § 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), since the protest was without legal merit on its face.

We affirm our prior decision.

The facts were fully set forth in our prior decision and will be restated here only insofar as is necessary to resolve Grimberg's request for reconsideration. On the morning of bid opening, January 9, 1985, Grimberg sent the following telegram to the Navy concerning the solicitation:

"Due to the absence of sketch number TS-02202-1 as specified under contract specification section 02202, 'Earth Work for Utilities' this item will be deleted from our proposal if this sketch can be picked up from your offices, please phone the undersigned to advise"

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The record shows this telegram was received by the Navy at 11:59 a.m. for further forwarding to the contracting officer in anticipation of bid opening at 3:00 p.m.


Grimberg argues that the telegram did not indicate that its bid did not include performance of the solicitation requirements in conformance with the sketch, but stated that Grimberg would exclude compliance with the sketch from its bid if the contents of the sketch were not made known to it prior to bid opening time. Grimberg also points out that since the solicitation stated that the government would not consider a telegraphic bid or a telegraphic modification of a bid unless the bid had been previously received, Grimberg's telegram could not be considered as a modification of its bid. Grimberg contends that the telegram was "no more than the statement of an intention to take a future action," and, since Grimberg's bid did not on its face take exception to the work required by the sketch, the bid was unambiguous and responsive to the solicitation.

The question of responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items or services in total conformance with the requirements specified in the IFB. Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 C.P.D. ¶ 162. Because all bidders must compete for advertised contracts on a common basis, no individual bidder can reserve rights or immunities from responsibility that are not extended to all bidders by the conditions and specifications advertised in the IFB. Free-Flow Packaging Corp., B-204482, supra. Where a bidder qualifies its bid to protect itself or reserves rights which are inconsistent with a material portion of the IFB, the bid must be rejected as nonresponsive. Data Controls/North Inc., B-205726, June 21, 1982, 82-1 C.P.D. ¶ 610, reconsidered and affirmed in Data Controls/North Inc.--Request for Reconsideration, B-205726.2, Aug. 16, 1982, 82-2 C.P.D. ¶ 131. In this regard, a bidder's intention must be determined from all the bid documents at the time of bid opening and this includes extraneous documents submitted with the bid which must be considered a part of the bid for purposes of determining the bid's responsiveness. Free-Flow Packaging Corp., B-204482, supra, citing National Oil & Supply Co., Inc., B-198321, June 20, 1980, 80-1 C.P.D. ¶ 437.

Grimberg points out that it sent the telegram 6 hours before the time set for bid opening and that it submitted its bid to the Navy sometime after it sent the telegram.

However, the Navy received the telegram about 3 hours prior to the time set for bid opening. Whether or not the telegram was intended to be part of Grimberg's bid, the fact remains that both the bid and the telegram were received contemporaneously by the contracting officer, and as such must be read together as a comprehensive statement of Grimberg's intentions at bid opening. In this regard there was no indication in Grimberg's bid that it wished the contracting officer to disregard the qualifying telegram. In these circumstances it was reasonable for the contracting officer to consider the telegram along with Grimberg's bid for the purpose of determining the bid's responsiveness. See Free-Flow Packaging Corp., B-204482, supra. Moreover, a bidder has an obligation to prepare its bid in such a manner that a contracting officer may accept that bid with full confidence that an enforceable contract will result. Cable Consultants, Inc., 63 Comp. Gen. 521 (1984), 84-2 C.P.D. ¶ 127. The issue here is simply whether the bid, including the telegram received contemporaneously by the contracting officer, reflected an unequivocal offer to provide the requested items called for in the IFB in total conformance with the specifications. Edw. Kocharian & Co., Inc., 58 Comp. Gen. 214, 217 (1979), 79-1 C.P.D. ¶ 20; Franklin Instrument Co., Inc., B-204311, Feb. 8, 1982, 82-1 C.P.D. ¶ 105. In our opinion, the above-quoted portion of the telegram cast great doubt on whether Grimberg intended to perform the "earthwork" requirement of sketch No. TS-02202-1 and whether an enforceable contract for such work would have resulted by the government's acceptance of the bid. Thus, we do not believe the form of the qualifying document--i.e., a telegram--could properly allow such a qualified bid to be accepted where the bidder's intent was at best ambiguous. See Franklin Instrument Co., Inc., B-204311, supra. Since a bidder cannot reserve rights or immunities from responsibility that are not extended to all bidders by the specifications, the ambiguity in Grimberg's bid as to whether it represented an unequivocal offer to comply with the material requirement in the referenced sketch rendered Grimberg's bid nonresponsive.

We affirm our decision dismissing Grimberg's protest of the Navy's rejection of its bid as nonresponsive.

for 
Harry R. Van Cleve
General Counsel